

JUN 17 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

JOHN F. CORCORAN, CLERK
BY: *S. G. Wilson*
DEPUTY CLERK

UNITED STATES OF AMERICA,) Criminal Action No. 5:05cr00007-6
)
v.) 2255 MEMORANDUM OPINION
)
DEWAYNE ANTHONY SHIFFLETT.) By: Samuel G. Wilson
) United States District Judge

DeWayne Anthony Shifflett, a federal inmate proceeding pro se, filed a letter under seal in which he alleges that his conviction is “unconstitutional” and his plea was not voluntary. Inasmuch as Shifflett is challenging the validity of his federal conviction and sentence in his letter, the court construes the letter as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Upon review of the record, the court finds that the § 2255 action must be dismissed as successive.

I.

Court records indicate that Shifflett has previously filed a § 2255 motion, see Civil Action No. 7:06-cv-00497 (W.D. Va. Oct. 1, 2007) (finding that all of his claims were without merit), regarding the same conviction and/or sentence. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Shifflett has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.¹

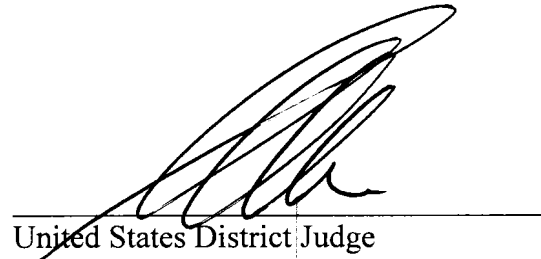
¹ Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

II.

For the reasons stated, the court denies Shifflett's § 2255 motion and dismisses it as successive.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all parties.

ENTER: This 17th day of June, 2009.



United States District Judge